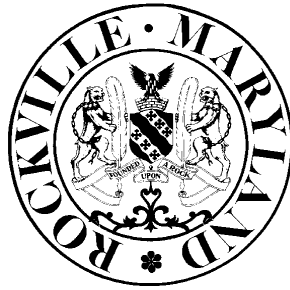


Land Uses



White Paper Discussion
City of Rockville, Maryland

January 11, 2006

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**City of Rockville
Zoning Ordinance Revision
Issue Paper**

Land Uses & Land Use Regulations

PART 1 – INTRODUCTION

I. INTRODUCTION

A critical task in any zoning revision is to review and update the land use classifications and any particular regulations associated with uses. The term “land uses” means the way land is developed and operated in terms of the types of activities allowed (agriculture, residences, industries, etc.). Historically, land use is the major focus of the regulations of traditional zoning codes. Only more recently have land use regulations begun to take a back seat to bulk and other development requirements within a zoning code.

The Rockville comprehensive zoning revision will involve a number of updates to the land use regulations. These priorities have been identified by the Mayor and Council, the Planning Commission, the Master and Neighborhood plans, and by staff from their daily administration of the zoning ordinance. The update will determine how uses can be better defined and classified given current trends and modern needs. In particular, the proposal from other white paper discussions to incorporate form-based zoning regulations requires a different, broader, scheme for land use regulation.

The first part of this paper covers the types of uses and how to define them. The second part addresses how land uses are regulated in the current ordinance and how to present them in the code. Part 3 explains additional considerations for the revision as they relate to form-based development and performance standards. The fourth part discusses the relationship of the uses to the master plan. Finally, the fifth part provides initial recommendations from staff.

II. TYPES OF USES

The current Rockville zoning ordinance classifies uses in a similar method as many other jurisdictions, though the terminology may change from jurisdiction to jurisdiction. The following is a list of classifications in which uses of the City may fall. These classifications are not necessarily exclusive of each other. For example, a use may be a principal, special exception use that is also a nonconformity.

- A. Principal Use – An activity on a property that is the dominant use of that property, i.e., a detached single-family house, or an office building.

- B. Accessory Use – An activity on a property that is incidental to a permitted or special exception use, i.e., a detached garage or a school administered by a church. A greater description of the issues associated with accessory uses is provided in a separate white paper, entitled “Accessories.”
- C. Permitted Use – An activity conducted within a building or on a site that is allowed by the regulation of the zoning district in which it is located.
- D. Permitted with special conditions (sometimes referred to as a “conditional use”) – An activity that can be established or operated in the district for which it is designated, but which must meet certain standards, operating conditions or other requirements that are specifically *set forth in the zoning ordinance*. This method of use control can provide the public with a known list of standards with minimal surprise down the road. On the other hand, this method of regulation can result in multiple separate sections of the ordinance, which adds to the length and complexity of the overall document.
- E. Prohibited Use – A use of land not permitted as a matter of right or by special exception anywhere within a particular zone.
- F. Special Exception – An activity that can be established or operated in the district for which it is designated but which must meet certain operating conditions that are *established by the Board of Appeals*, on a case-by-case basis. A greater explanation of these uses is provided in Part 3, Section V, below.



- G. Temporary Use – An activity that is established and operates for a short, set period of time. Examples include seasonal outdoor sales, yard sales, and temporary offices at construction sites. In Rockville, certain temporary uses require a temporary use permit while others, such as a yard sale or wayside stand, do not. A greater description of temporary uses is provided in the Accessories White Paper.
- H. Seasonal Use – A use of a building, lot, or both, or a portion thereof, which is periodically used for a certain portion of a calendar year. The sale of garden produce, or Christmas trees are examples of this kind of recurring seasonal use.
- I. Nonconforming Use – An activity that was lawful when established but which no longer conforms to the requirements of the zone in which it is located. A greater description of nonconforming use considerations is provided in the Nonconformities White Paper.

PART 2 - GENERAL CONSIDERATIONS FOR LAND USES

I. ORDINANCE STRUCTURE

The following discuss considerations in developing and revising a zoning scheme and how it may be applied to the City of Rockville.

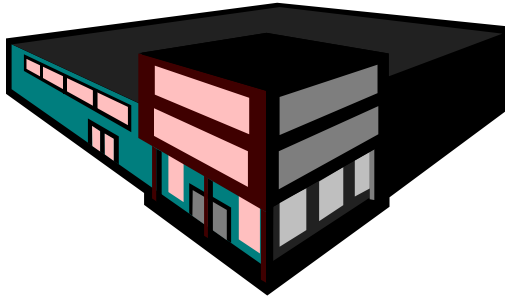
- A. **Inclusive Districts** - Rockville does not have what is called a “tiered” or “inclusive” hierarchy of uses, as is applied in many other jurisdictions. In other words, uses that are allowed in more restrictive zoning districts of Rockville are not necessarily allowed in less restrictive zoning districts. Instead, each use is examined individually to determine in which zone(s) it is best suited. This is generally consistent with the County’s practice. The City’s original zoning code (and the County’s) began as inclusive codes. Both the City and County codes were substantially revised into their current format in the 1950’s.
- B. **Use Classifications** – Use classifications provide a consistent set of terms identifying the uses allowed or not allowed within each district. Classification systems also provide a procedure for determining whether uses not specifically listed are allowed in the various districts.

Zoning revisions of traditional use classifications can be done for a number of reasons. These may include any and all of the following:

1. Clarification of terms - Terms used may not be easily understandable to the general public. Revision can provide the opportunity to use terms that are easier to understand.
2. Modernization of terms – Soda Fountains are still regulated in Rockville’s ordinance as a use, though the fashion to develop these uses has passed. A number of modern use categories are recommended in the Master Plan to be added to the zoning ordinance. For example, with the increased interest in research laboratories in the area, zoning clarification should be given to distinguish different regulations to be applied to dental and medical laboratories versus biotech research laboratories. The revision process is an opportunity to review these uses.
3. Consolidation/Differentiation of terms – Where two or more uses are treated the same or similarly under current standards, these uses can be consolidated into one category. Likewise, where one use should be classified into different categories because of various nuances of the use, the zoning revision provides the opportunity to divide the use into different terms.

An advantage to grouping uses is that it limits the need for multiple detailed definitions for each specific use. The disadvantage to this method of use

classification, however, is the consistency in interpreting in which group a particular land use should be placed. A solution may be to list a few common uses within a general category but word the interpretation section broad enough so that it is clear that more uses are allowed than the particular ones listed.



The term “retail” is essentially the sale of a tangible product or the provision of a service to the public--general merchandise, apparel, furniture, etc; convenience goods (food, gifts, drugstore items, etc.), personal business services, professional/medical offices, restaurants, and hotel, theater, and other uses that provide visual interest. Retail can be further divided by purpose and location:

- a. **Primary Retail Use** – These uses are located on primary pedestrian paths (first story, active streetscapes) and generally include uses that provide entertainment or leisure activities, promote high walk-in customer counts, or are shopping destinations.
- b. **Secondary Retail Use** – These uses are located on secondary pedestrian paths (upper stories, less active streets) and generally include uses that provide personal or business services. Neighborhood-serving retail centers may also come under this category.

Retail in form-based regulations is often more inclusive than the term may be defined in Euclidian zones. One of the most common methods of consolidation is providing a broader definition of retail. Generally, retail should be required on the ground story of main streets and other primary access sites. The existence of retail creates a purpose for using the fronting street.

C. Display of Use Regulations

The current use classification section of the ordinance is displayed through a chart, divided into two sections, “Residential Uses” and “Commercial, Office, and Industrial Uses” and attached to this document. Each section includes a list of general topic areas with more specific and related uses listed within each. By including 222 uses and their allowance or non-allowance in 26 districts, it is an extensive, but not all-inclusive, chart.

The chart, however, does shorten the length of the ordinance. The length would be quite extensive if all permitted uses were listed under each zone, individually. This was the old method of zone regulations and could add a considerable length to the document. This method is still used in the special development options sections of the zoning ordinance.

Some communities have begun to reference outside sources to significantly shorten their use charts. Use classifications are often derived from the North American Industrial

Classification System (NAICS) or the Standard Industrial Classification System (SIC) for land uses. This SIC tracks and codes new businesses and industries as they are established and developed based on production and market economic concepts. The NAICS categories are based on the types of production activities performed for each use in order to reflect new planning trends. These general terms can then be modified to reflect situations specific to the City. Where the categories defined in the NAICS or SIC meet the requirements of the jurisdiction, however, the source can be referenced in the ordinance and referred to when example uses are required for administration of the ordinance.

It should be noted that no matter what method of classification is chosen, there will still be a need for interpretation based on evolution or modification. This is the section of the code that needs to be reviewed every few years.

II. REGULATORY CONSIDERATIONS

There are certain regulatory matters that involve land uses. These include the regulations for special exceptions, addressing uses not specifically shown in the use tables, and administering the use permit process, which includes land uses as one of the factors that must be considered.

A. Special Exceptions

A special exception is a permissive use of land authorized by the City, subject to specified standards and conditions and as approved by the Board of Appeals. The Board may allow a specific uses where it can be shown that the use will not adversely affect adjacent properties or the neighborhood and that the use meets set conditions and standards prescribed in the ordinance.

1. Reasons for Designation: A special exception is a use that the City has determined is compatible with the other uses in the zoning district, subject to meeting the standards and requirements set forth in the code. A special exception may be applied for anywhere in the zoning district where it is allowed. The master plan may also identify certain properties as suitable for special exception uses, usually based on the site's relationship to surrounding uses, particular site characteristics or access points.
2. Considerations for Approval - There are a number of elements that must be considered before approval of a special exception. These elements are currently included in the zoning ordinance under the Standards for Granting:
 - a. The use is consistent with the comprehensive/master plan;
 - b. The use does not adversely affect health, safety and welfare of residents;
 - c. The use is not detrimental to adjacent properties
 - d. The use does not overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements;

- e. The use does not change the character of the neighborhood in which the use is proposed considering service currently required, population density, character, and number of similar uses;
- f. The use meets all the standards prescribed in the zoning ordinance for that particular use.

Other findings that might be considered for inclusion in the code include the following:

- a. The use is designed to minimize possible adverse impacts;
 - b. The use will not adversely affect environmental or historical assets of the community;
 - c. The adverse effects of a use in a particular location would not be greater or more severe than would ordinarily be associated with the use.
3. Conditions of Approval – Special exceptions are so designated because they are deemed to need certain conditions/restrictions that otherwise permitted uses do not require. These restrictions are necessary to mitigate any potential adverse impact on adjacent properties or the general area. Types of conditions that may be placed on approval include:
- a. Site design;
 - b. Architectural character;
 - c. Location of use;
 - d. Type of construction;
 - e. Ingress/egress requirements;
 - f. Landscaping and screening location and type;
 - g. Operation hours; and/or
 - h. Liability insurance or bonds.
4. Special Exception Amendment - One purpose of the zoning ordinance revision, as provided in the Master Plan, is to explore modifying the special exception process to provide for a streamlined amendment process. Currently, even a minor modification must go through the entire special exception process. It should be noted, that these modifications may apply strictly to special exceptions (thereby limiting the need to undergo a new approval process from the Board) or they may be applied to nonconforming special exceptions (i.e. special exceptions which were approved under previous zoning regulations but which are not permitted under the existing zoning requirements).

Particular guidelines to be found for the approval of an amendment of a special exception may include:

- a. The legal establishment of the original special exception;

- b. The proposed change will not adversely affect the health, safety, and general welfare of residents or workers in the area;
- c. The proposed change will not be detrimental to the use or development of adjacent properties in the general neighborhood;
- d. The proposed change has been designed so as to minimize possible adverse effects on adjacent properties or on the immediately surrounding area;
- e. The proposed change will not adversely affect the transportation network or unduly burden water, sewer, school, park, and stormwater management areas, including streams, or other public facilities.
- f. The proposed change will not adversely affect the environment or historical assets of particular interest to the community as they may be identified in any adopted plan of the City.

The City may wish to consider whether to continue to separate out special exceptions. Since the existing code already allows conditional permitted uses, it may be worth considering making all, or most, of the special exceptions conditional permitted uses as well. Another factor to consider is addressing uses that would normally require a special exception in a form-based development. The recommendation would be to allow them without restriction beyond the approval requirements of the form-based development.

B. Unclassified Uses

Unclassified uses are those not specifically identified under the list of uses provided in the zoning ordinance ("Table of Uses," 25-296) and which are not specifically prohibited from the zoning district. Some jurisdictions include an encompassing prohibition against certain classifications of uses that may be injurious to the public such as hazardous waste disposal and noxious industrial uses.

Typically, determination of the unclassified use is made either by the planning staff designated to do so, or by the Board of Appeals. In order to be allowed, the use must be determined to be consistent with, or of a similar character, as a use already allowed. Clear guidelines should be followed in permitting an unclassified use. Certain zones may prohibit any allowance of unclassified uses; other areas may classify their permitted uses so generally that the majority of use requests are not distinctly classified. General considerations for unclassified uses include:

- 1. The use should be similar in character and still in compliance with the inherent purpose of the district;
- 2. The use should be consistent with the character and intent of the other uses permitted within the district; and
- 3. The use should be compatible with the recommendations of the Master Plan for that area of the City.

C. Administration

Under the current regulations of the zoning ordinance, authorization for a use other than a one or two family house requires a use permit. Use permit applications are submitted to the Planning Commission for consideration unless the Mayor and Council has previously approved a use permit for land owned by the City or purchased by the applicant from the City in the Town Center. New use permit applications for uses on land owned by the City or purchased by the applicant from the City in the Town Center Performance District are submitted to the Planning Commission. All other use permit applications are to be submitted to the Chief of Planning unless otherwise directed by the Planning Commission.

To determine whether a use is permitted or not, the first step is to identify whether the use is listed on the chart of permitted uses or not.

1. If the use is listed and permitted, the use proposed in the application for a use permit must meet the following requirements:
 - a. The definition of that use must match the proposed activity requested by the applicant. Land use definitions are critical in determining if a land use as allowed. If no definition is provided, the general fallback rule is that the dictionary definition of the use is to be applied.
 - b. The use must not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
 - c. The use must not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; or
 - d. The use must not constitute a violation of any provisions of the Code of the City of Rockville or other applicable law.
 - e. The use must not create a conflict with other sections of the code. For instance, if a storefront retail use wishes to convert to a restaurant use, the overall development must be checked to make sure there is sufficient parking to accommodate the greater parking requirement of the food service use.
2. If the use is not listed, a determination of whether it should be permitted is made. Determination of permission is based on whether the use is consistent with other uses allowed in the district in question. If the use is simply deemed compatible, no further action is needed outside of the issuance of a use permit. If the use is deemed not consistent or compatible, a text amendment is necessary (requiring the complete text amendment procedure before Planning Commission and the Mayor and Council) to authorize the use.
3. If approved, conditions to the approval may be attached to the use permit as may be reasonable and necessary to assure that the proposed use will be consistent with the purpose and intent of the Zoning Ordinance.

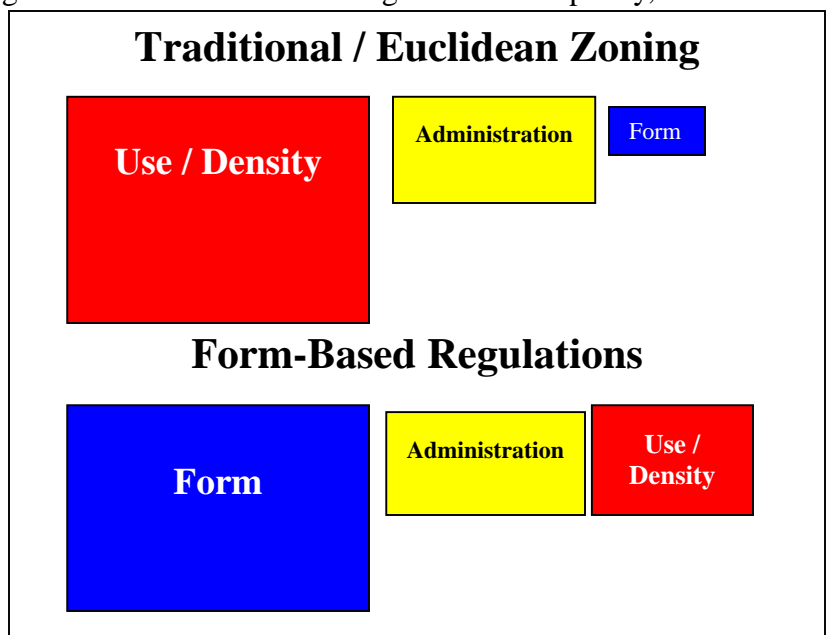
PART 3 – TECHNIQUES FOR ZONING REGULATION

In earlier discussions, staff has noted that there are different ways to administer land use regulations. The White Paper on Urban Design suggested some approaches. The following section is a recapitulation and expansion of different ways that land use regulations can be approached. A selective approach to using all of these techniques can enhance the ability of the City to tailor its development to the recommendations and guidelines of the master plan

I. TRADITIONAL ZONING (“EUCLIDEAN ZONING”)

Traditional zoning assumes that different types of uses are inherently incompatible and must be physically separated to protect against conflicts in uses. To regulate for that policy, traditional zoning regulations emphasize use regulations. These regulating schemes are not only about use, but also include administration regulations and some form regulations (i.e. bulk requirements of a building).

Euclidean zoning (see sidebar) developed from a demand for land use regulation in the 1920s when cities were growing at a rapid pace. Residents and businesses were upset when incompatible uses were built near their properties. Unwanted industries were bringing down property values and changing the character of existing communities. Zoning was implemented as a response to direct and control change.



Source: Form Based Code Fundamentals, Form Based Institute, Virginia Tech, 2005

Euclid v. Ambler Realty

272 U.S. 365 (1926)

The prominent case supporting the local jurisdiction's authority to zone is Euclid v. Ambler Realty. The village of Euclid, Ohio (hence the term "Euclidean"), had zoned an area of land held by Ambler Realty as a residential neighborhood. Ambler argued that it would lose money because it could no longer be leased to industrial users at a higher rate. The court ruled in favor of Euclid, saying that a community may enact reasonable laws to "keep the pig out of the parlor," even if pigs may not be prohibited from the entire community. Since that time, the majority of American communities have isolated uses by designated zones for each type of use (residential, office, industrial, commercial and institutional). This has created a patchwork pattern of isolated uses, requiring dependence on the automobile and less than ideal aesthetic development.

The City of Rockville, like many other jurisdictions across the country, has relied on Euclidean, traditional zoning. In other words, the emphasis in the City's zoning code has been on use regulations. In addition, traditional Euclidean zoning is typified by the use of proscriptive regulations (stating what a community does *not* want to see versus stating what a community does want to see built).

II. FORM BASED REGULATIONS

Form based regulations are premised on the idea that uses may change but the buildings remain far longer; therefore, regulations should focus on ensuring that quality form is provided that responds to the needs of the residents and visitors, not on the use allowed in the short-term. As discussed in section 1, above, and the Urban Design paper, traditional zoning (i.e. "Euclidian zoning") has produced undesirable sterile developments. Practitioners from different fields, such as planning, the law, and architecture, have reexamined communities and developed form based regulations to guide development away from the existing patterns.

There are a number of positive characteristics associated with form-based regulations. First, form-based codes emphasize predictable, result-oriented design *standards*, which are an alternative to design *guidelines* (which can be inconsistently applied). Form based regulations are based on community desires and therefore reflect those desires. In addition, proponents of this kind of regulating scheme support form-based regulations because they are geared toward non-practitioner understanding. This regulation scheme can also minimize the need for the numerous tweaks to conventional zoning that have developed to make old codes usable for today's needs (for example: overlays, conditional uses, special exceptions, planned unit developments, variances, and density bonuses).

A. Use Regulations in Form-Based Codes - Use-centered codes will allow for great development to be built, but absent any regulation requiring such, most developers will limit their designs to what is required to maximize profit. Form based codes add additional regulations to control the character and function of the spaces between buildings in order to ensure that high quality development is created. While these codes include use regulations, the focus is redirected away from uses, on the theory that many uses in today's market are compatible. As stated above, traditional thinking is that certain land uses and activities are inherently incompatible. The theory behind form-based regulations is that most any land use can co-exist with any other land use; therefore, the emphasis should be on creating high quality design.

Although the emphasis in form-based regulations is "form," uses are not completely excluded from these regulations. On the contrary,

Form Based Code Advantages

- Prescriptive (state what community does want) so, they achieve a more predictable physical result.
- Encourage public participation.
- Resulting built environment reflects a diversity of architecture, materials, uses, and ownership.
- Easy for non-professionals to use.
- Easier to define and quantify true costs of public amenities to support new growth and redevelopment (because focuses on public realm)
- Obviate need for design guidelines (which can be difficult to apply consistently).
- Often more enforceable than design guidelines.

Source: Peter Katz, "Form Based Codes (FBCs): Eight Advantages, 2005.

use regulations can ensure that uses provide the vibrancy necessary to support pedestrian interest and therefore the use of public space. While general terms are used in these districts, a list of particular uses allowed may provide a greater explanation of the types of uses. Other uses to be permitted would be determined by a designated planning staff member (based on guidelines provided in the code).

B. Master Plan Authority to Use Form-Based Regulations - Though the Master Plan does not specifically address the use of form-based regulations, the general recommendations of the plan are consistent with the advantages and purposes of form-based regulations.

1. Under form-based regulations, various uses will be allowed within the designated area, and the focus will switch to the building. As stated in the Master Plan with regard to industrial uses, “[i]f the buildings and/or properties are not maintained, the condition of these industrial sites can adversely affect the adjacent residential neighborhood.” The purpose behind these zones is to create an open attractive environment.
2. Specific purposes of the zoning revision, listed in the Master Plan, include:
 - a. Clarify provisions (which clear form-based regulations intend to do)
 - b. Examine increased flexibility in the development process, as permitted in state enabling legislation (which form-based regulations intend to do)
 - c. Explore the need to create new zones to accommodate new patterns of growth, development and infill (which form based regulation intend to do)
 - d. Modify certain design standards to reflect current trends and desired outcomes (which form-based regulations intend to do)

Elements of Form-Based Codes

1. **Regulating Plan** – Form based regulations can be based on street classification or building type (single family house v. town center mixed-use building). With each option, a map of the area defining property lines, building lines, and public spaces should be provided.
 2. **Standards:**
 - a. Height – Maximum number of floors and minimum need for street wall
 - b. Siting - Placement of structures in relation to streets and adjacent lots, specs for entrances, parking and yards.
 - c. Elements - Dimensions for windows, doors, porches, etc.
 - d. Uses – Configuration of specific uses within each building type.
 3. **Thoroughfare Standards** – If streets are not individually designed. Diagrams can define dimensions from travel and parking lanes, sidewalks, medians, and planting strips
 4. **Landscape Standards** – Lists accepted tree and groundcover species and location details
 5. **Definitions** – Glossary to clarify specific terms
 6. **Architectural Standards** – Optional if desired
- Sperber, Bob, “Function Follows Form,” www.housingzone.com, 2005.

III. PERFORMANCE REGULATIONS

Performance zoning is a flexible means of regulating which is useful to ensure that the desired level of quality development is created in a City or area of a City. Examples of these types of regulations include hours of operation; traffic, light and glare, and noise impacts; landscape surface; floor area; building volume; open space; and other regulations ensuring compatibility with neighboring uses. Documentation may be required on the performance of any of these requirements.

Performance regulations can be incorporated into traditional zoning, form-based regulations, or can be applied alone. There are not many jurisdictions in the country that use performance zoning exclusively. Instead, the majority of communities that use performance regulations do so to address specific problems. The calculations required for performance zoning are applied on a site-specific basis.

Uses in performance regulations are designed for their characteristics. This scheme attempts to regulate the *impacts* of development; the emphasis on the type of uses, therefore, is not as prominent as it is with Euclidean zoning. These types of regulations are used most often to supplement traditional regulations of use and bulk standards.



Benefits of Performance Regulations

- Problem-solving: One size does not fit all;
- Regulations are more prescriptive than procedural;
- Standards are directly attributable to the use – legal nexus (increased intensiveness = increased standards);
- Adaptable to varying conditions and characteristics (rural, suburban, urban);
- Flexibility allows good design without loss of density;
- Ensures development responds to community goals – resource protection, housing issues, etc.;
- Predictable outcomes;
- Regulations are written - not negotiated;
- Developer knows if standards are met, approval is routine; and
- Allows impacts to be measured and remedied

Source: Lane Kendig, Inc., “Hybrid Zoning Codes: A Case for Performance Zoning: Crafting Standards That “Perform,” APA Conference, 2004.

PART 4 – RELATION OF USES TO THE MASTER PLAN IN ROCKVILLE

I. CURRENT USES IN ROCKVILLE

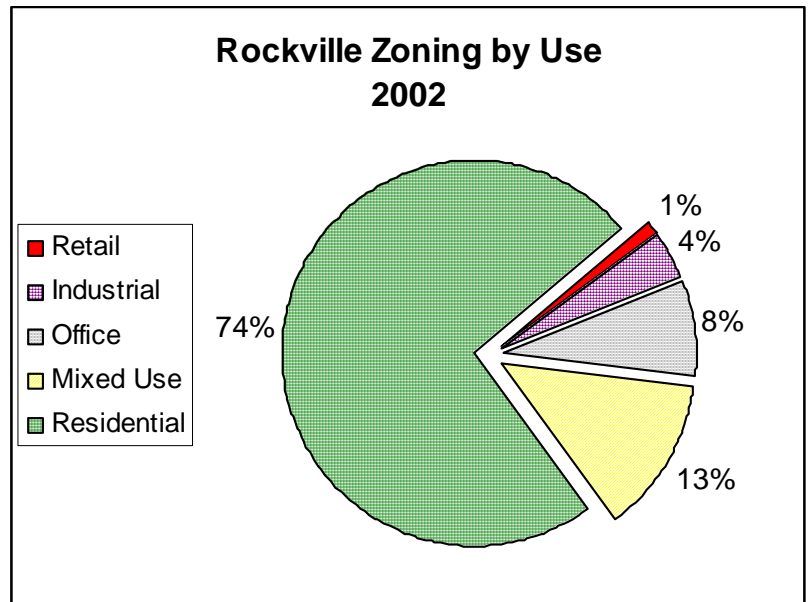
The Rockville zoning code has historically followed a traditional zoning regulation scheme (a.k.a. “Euclidian zoning”). Within the past few decades, Rockville regulations have provided more opportunities for mixed-use development through special development procedures; however, the majority of the base zones (i.e. where there is no special overlay or optional method of development applied) in the City are single-use districts.

A. Comprehensive Plan Land Use Element

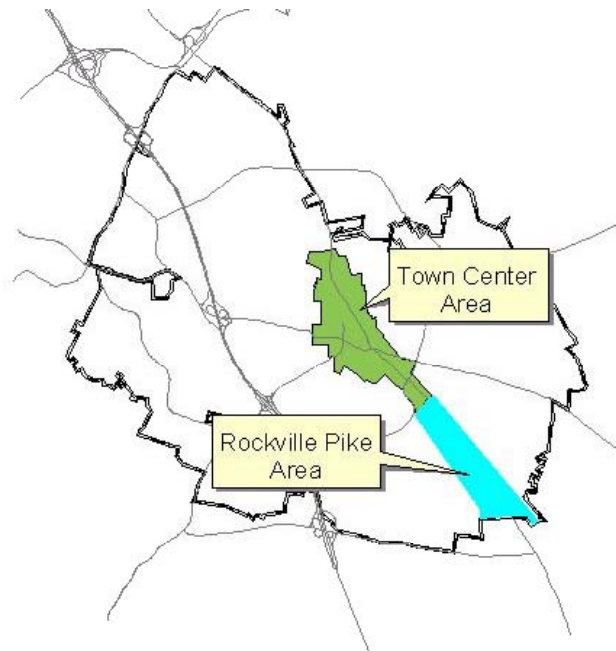
In Maryland, zoning decisions should be grounded on the policies and recommendations on the individual community’s master or comprehensive plan. In Rockville, the land use section of the Master Plan provides a general breakdown of the existing land uses in the City. More particular recommendations for the City have been developed through individual neighborhood plans.

1. Residential - According to the 2002 Comprehensive Master Plan for the City of Rockville, residential zones are the predominant use in the City, comprising 74% of the City’s 13 square mile area; actual residential use, however, is greater than 74% due to the residential presence in mixed-use areas. Residential zones are classified by the minimum lot area per dwelling (in square feet) required in each zone (from 1,000 square feet per unit in the multi-family zones to one house per 40,000 square feet in the lowest density one-family zone). The majority of residential uses in the city are located in the smaller size residential lot districts (R-60, R-75 and R-90). The large lot residential zones in the City (R-S requiring 20,000 square foot lots and R-E requiring one acre lots) are currently dominated by City-owned parkland or institutional uses such as country clubs (with the exception of Hectic Hill Lane residential lots).
2. Commercial – Major single-use commercial (i.e. retail and service) uses are primarily located in small commercial centers interspersed in the residential neighborhoods. As you can see from the chart above, single-use retail districts are only a small part of the City’s total land use (1%), though they are an important feature to the Rockville community. The majority of commercial uses in the City, therefore, are located in mixed-use zones.

3. Office – According to the 2002 Master Plan, eight percent of the city is zoned for the single-use of offices. A greater number of office uses are located within mixed-use districts. Within the Town Center, for example, office buildings are intended to provide mixed-use options, given their proximity to the Metro line. Traditionally, Montgomery County has occupied many of the office building within the Town Center, though legal offices have also occupied a large amount of office space.



4. Industrial - There are currently four classifications of industrial uses, each with increasing intensity of use allowed. I-1 and I-2 are service industrial, concentrated in low-rise buildings designed for service and manufacturing. The service sector is important to maintain in the City as it provides essential support to the businesses and residents of the City, such as printing, graphics, storage, and automobile repair. As stated in the Plan, the concern is maintenance of the buildings and properties. The I-3 zone is intended primarily for office and limited service industrial uses in a campus setting. The I-4 zone allows for low-intensity service industrial and recreational uses.
5. Mixed Use Areas – There are two primary mixed-use base zones (i.e. not developed solely under special development procedures) of concern in the revision, Rockville Pike and Town Center.
 - a. **Rockville Pike** – Currently, the Pike retains its character as a suburban strip center with varied architecture often associated with a store or restaurant's corporate image. Because of concerns over increased traffic, safety, and aesthetic reasons, within the past few years the Mayor and Council adopted an amendment to limit the size of individual stores ("big boxes") to 65,000 square feet within the entire City. In addition, the RPC (Rockville Pike Commercial) rezoning, adopted in 1989, was intended to promote mixed-use development under an optional method of development. This amendment encouraged the development of more mixed uses and it is that balance (away from retail predominance) which the Plan recommends should continue.



- b. **Town Center** – The auto-oriented commercial strip of Rockville Pike has pulled retail uses away from the Town Center over the past two decades. The traditional downtown core is occupied primarily by public uses. Recent high-rise office and residential development, coupled with the Town Square project, will help re-make the town center a mixed-use development. Restaurants and other service uses will be geared towards the nearby office workers, and local service retail will be available for the new residents and adjoining one-family neighborhoods. Future zoning recommendations will need to be geared to continue and enhance this development in accordance with the Town Center Master Plan.



LAND USE IN ROCKVILLE

In terms of overall land uses, the City is comprised of approximately 7,352 acres, excluding road rights-of-way. The uses break down as follows (see also the map at Attachment 5):

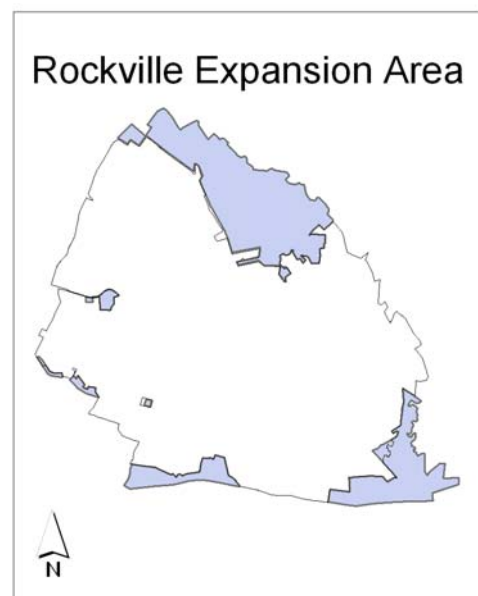
Commercial	-	4.6%	Office	-	15.1%
Parks	-	12.9%	Golf & Country Clubs	-	9.1%
Residential	-	41.1%	Industrial	-	2.3%
Institutional	-	8.6%	Town Center Area	-	6.1%

Note that the golf and country clubs, parks, and residential uses are all currently in one of the residential zones, which reflects the 74% city area that is zoned residential. Figures do not include 1,054 acres of roadway rights-of-way.

B. Critical Issues Addressed in the Master Plan

The issues presented in the Master Plan can determine what types of uses may be needed and where they should be located in the City.

1. Jobs to Housing Ratio - The jobs to housing ratio in 2002, was 3.3 to 1. This number suggests that there may be a need for more housing in the City, particularly in the Town Center close to many jobs. With the completion of Falls Grove and King Farm, the ratio may have improved.
2. Critical Areas – The Master Plan has identified a number of parcels / areas of the City likely to undergo redevelopment and made particular recommendations for those parcels or areas. These will be considered when the zoning map is reviewed.
3. Annexation – Under Maryland Law, the County Council must concur if any property annexed into the City is classified in a zone different from the County's zone for that property. A good portion of the area within the maximum expansion limits along East Gude Drive is in the County's I-2, Heavy Industrial Zone. By County resolution, annexations from the County's I-2 to the City's I-1 Zone will not be considered consistent with the County's zoning because these two zones provide for a different range of uses. If land is to be annexed from this area, a new zone similar to the County's I-2 Zone would have to be developed.
4. Purpose of Zoning Revision – Among other recommendations discussed throughout these



white paper discussions, the purpose of the zoning revision is to add or modify definitions and appropriate standards for new uses, especially those that reflect modern technological changes.

II. PUBLICLY OWNED LAND

Not specifically mentioned in the Master Plan is the concern of publicly owned land. Under state law (Article 23A), the City (and the County under Article 28) has the right to hold property for the public benefit. The City (or County) may use the land for parks or monuments, to erect buildings thereon, or for any other public use. In addition, the government may sell the property when the legislative body determines that the land is no longer needed for any public use. Since Rockville is not only an incorporated city, with associated city office and utility buildings, but also the County seat, there are a number of publicly owned properties in the City. While the City and County own most of the public land, there may be other holdings by the Federal government or other agencies such as the Washington Suburban Sanitary Commission.

In Rockville, publicly owned or operated buildings and uses, excluding sanitary landfills and incinerators are special exception uses in all residential zones including the Rockville Pike Residential zone. Elsewhere throughout the City, these uses are permitted. The foremost publicly owned use that is located in residential districts is schools. As a result, Montgomery County schools must undergo an additional step of special exception approval in the City.

All publicly owned or operated buildings and uses require a use permit application (as do other uses in the City). Use permit applications for these uses must be submitted to the Planning Commission, unless the Mayor and Council have previously approved a permit. Again, for those uses which are located in a residential district, any application for that use or a modification of that use must undergo 1) a Board of Appeals special exception approval and 2) a Planning Commission use permit review.

PART 5 – RECOMMENDATION AND CONCLUSION

I. RECOMMENDATION

Staff has reviewed the considerations of uses, the current uses in Rockville, and the recommendations from various plans. The following are initial recommendations with regard to how uses should be amended in the revision process. Additional details will be developed in the outline and drafting stages of the revision.

- A. **Consolidation of Uses** - Defining land use types can incorporate one of a number of different approaches. Traditionally, Rockville's zoning ordinance has included an exhaustive, but not completely inclusive list covering a wide spectrum of possible uses. Staff remains comfortable with a list of easily classifiable uses determined on a district-by-district review basis.

One consideration for the zoning revision will be to group some uses into more inclusive categories. This reclassification would allow more modern uses to be incorporated with traditional uses. Particular recommendations of use classifications will be provided in the future outline and drafting stages of the revision process though the following list provides some broad use categories that may be included:

- | | |
|---|--|
| 1. Accessory and Support Uses | 7. Public / Quasi-Public Facility Uses |
| 2. Education, Religious and Assembly Uses | 8. Recreation Uses |
| 3. Manufacturing and Processing Uses | 9. Residential Uses |
| 4. Mixed Uses | 10. Retail and Service Uses |
| 5. Office Uses | 11. Temporary Uses |
| 6. Open Space Uses | 12. Transportation Uses |

This consolidation of uses may require additional definitions to clearly identify the scope and intent of these new categories.

B. Organization of Table of Uses– The use table should be reorganized for easier understanding.

1. Classification of Uses - As currently organized, a new reader of the ordinance must pay close attention to each use entry to see what category it is a part of. The same uses may be allowed in different groupings, and have different standards and requirements. An example would be professional offices, which are allowed in the residential zones as a home occupation, and also in the commercial and industrial zones. The home occupation definition includes standards restricting the size and character of the use, while in the commercial category the use is allowed with broader provisions. A homeowner could also operate a standard office as a home occupation, but cannot have any nonresident employees.

To resolve this problem, each use's name could list the classification and the individual use. In the alternative, a new style for the use table could be developed, such as the table style provided below, although the chart provided here is simply an example and may or may not be the categories or locations identified in the final document. As is shown on that table, each broad category could be further divided by "group" (i.e. Commercial Service v. Entertainment Service) and further by "specific use" (i.e. Commercial service – barber, groomer, or dry cleaner; and Entertainment Service – theater or club.)

Use Table for Residential Districts							
P= Permitted by Right S= Special Exception							
Category	Group	Specific Use	Zoning Districts				Addl. Regs.
			RS – 4	RS – 6	RM – 12	RM - 16	
Residential	Private Residences	Multi-family dwelling	-	-	P	P	
		Single-family dwelling	P	P	P	P	
	Group Residences	Dormitory	-	-	S	S	25-111
		Group Home	S	S	S	S	

2. Alphabetization - With ad hoc amendments to the zoning ordinance, the table of uses has lost one tool to ease of use, alphabetization. Depending on the method of classification use (discussed above), the utility of alphabetization will be reviewed.
3. Symbolology - In addition to reorganization, staff recommends reviewing the symbols used in the use chart to designate the classification of permitted uses. The current symbols of P (permitted), S (special exception) and blank (not permitted) are clear and easy to use. The parenthetical "P" [(P)] is not clear to demonstrate that additional regulations are applicable. Instead, staff recommends using the letter C for permitted uses with constraints.
4. Cross-References – Where additional regulations are provided in the ordinance, staff recommends including a list of those additional regulations in the chart or as footnotes.

- C. **Clarification of Definitions** – Staff has mentioned repeatedly the need to update definitions, to remove regulations from the definitions, and to remove unnecessary definitions from the ordinance. These recommendations are particularly important with regard to use classifications. With modifications to the use chart, new definitions may also be needed.
- D. **Special Exception Amendment Process** – The Board of Appeals would like to have more oversight in the special exception amendment process. Currently, any change to an approved special exception requires a new application and de novo review of the application. Staff recommends including in the revision some administrative process where 1) staff can determine whether the appeal is a minor or major amendment and 2) the Board of Appeals can review minor amendments without requiring a new application process.
- E. **Use Permits** – Examine the Use Permit approval process in light of the recommendations regarding use of form-based regulations.
- F. **Emerging Uses** – Many new uses being developed in the marketplace are hybrids of existing uses. In many situations, staff can make a determination of use based on the existing uses within the district. Staff feels comfortable retaining this method of review.

With broad classifications of uses, as proposed above, there is a greater potential that undesirable use might be allowed. To help protect against that eventuality, staff envisions two types of safety nets to protect against unwanted uses: 1) performance standards (to limit negative impacts) and 2) classification guidelines within the ordinance stating how uses must be evaluated. Another option might be to establish an administrative review process to determine suitability of uses. A set of administrative guidelines would have to be developed to achieve administrative determinations.

- G. **Division of Use Classifications** – Staff continues to support the application of new form-based regulations in certain areas of the City (i.e. where master or neighborhood plans support such application); however, there are large portions of the City where form-based development will not be applicable such as the one-family residential neighborhoods. In those areas, the established zoning process will remain fundamentally intact.

The division of two types of zoning districts will result in a separation of these districts in the ordinance. Particular regulations (bulk and use standards) will be provided in different sections of the ordinance for each type of regulating scheme.

1. Traditional Zoning - In areas where traditional zoning will be maintained, use classifications will continue to be emphasized. In particular, the critical areas identified in the Master Plan will be reviewed and maintained in the zoning ordinance and on the zoning map. Where current use classifications will remain, these uses (as demonstrated in the “Table of Uses” 25-296) should be inventoried, consolidated, clearly defined and generally updated.
 - a. Mixed-Use – Staff recommends increasing the number of mixed-use districts in the City. These districts would allow for different types of uses to be located within the boundaries of each zone, though individual projects or buildings may house one or more than one use. The mix of uses would include what have been classified in traditionally commercial, multi-family residential, and office zones. Providing for a broader mix of uses in the current commercial, office, multi-family, and even industrial zones might help accomplish some of the City’s development goals.

Specifically, staff would like to recommend the modification of the commercial zones for the neighborhood-serving shopping centers such as Twinbrook and College Gardens to allow the potential for mixed-uses zones to be used. In such development the on-site residents would have an investment in the appearance and operation of the commercial areas, and increase the safety aspect by having “eyes on the street” at all times.

One concern with mixed-use areas is providing a transition to surrounding residential areas. A distance gradient is one option, similar to what is applied to the Town Center zone. This gradient will discourage the development of tall buildings next to residential districts, which are out of character with the existing

smaller residential development. Compatibility provisions will need to be crafted, perhaps on a case-by-case basis.

- b. Residential – The one-family detached zoning districts are expected to remain Euclidean and should generally retain the same types of uses currently allowed within each district. Potential changes within residential zones will involve examination and modification of certain uses as the revision process continues. Items such as home occupations will be reviewed in the context of the recommendations contained in the Accessories White Paper to base approvals on neighborhood traffic impact. Other uses, such as accessory apartments, bed-and-breakfasts may be revised or added to the list of allowable uses. The special exceptions and their standards will also be reviewed.
- c. Industrial – Industrial zones are important to maintain in the area, as they provide important services to the citizens of the City. Staff recommends maintaining the same uses for industrial districts but reexamining them in the next Master Plan update. These are the areas of the City where printing plants, maintenance shops, warehouses and service facilities are located. These areas are also the location of potential annexation areas of the City, as discussed in part 3 above. Since allowing similar uses as in the County is important to maintain for potential annexation, staff recommends not modifying what exists in the City. The key concern heard from citizens regarding industrial areas is not the location of these facilities but ongoing traffic issues.
- d. Public Uses – These uses include parks, libraries, courthouses, fire and police stations, public schools, and similar uses. These uses are owned or occupied by Federal, State, County, or City agencies. City facilities are permitted in all zones. Other government facilities are currently required to obtain a special exception in the residential zones. Along with other non-residential uses, public uses must obtain a use permit from the Planning Commission.

Article 66 B of the State Code requires public agencies to submit projects to the Planning Commission to determine if the project is consistent with the adopted master plan. Staff therefore recommends that all uses of publicly owned property proceed under a single process of mandatory referral to the Planning Commission. This use permit application would satisfy the mandatory referral requirement, and eliminate the requirement for obtaining approval of a special exception from the Board of Appeals. It needs to be recognized that the higher levels of government can override the City's requirements. Finally, the creation of a new zone to be applied to public open space will be considered in future issues discussion during the revision process.

- 2. Form-Based Zoning - In areas of the City where form-based regulations are most applicable, use classifications will be de-emphasized. Where broader use

classifications are needed to support the application of form-based regulations, these uses will be classified in the individual form districts within the ordinance.

3. Performance Zoning – While performance zoning regulations can stand alone, staff recommends incorporating performance regulations in addition to traditional or form-based zoning regulations, where applicable. For example, the Town Center’s plan to use shadow-casting regulations will be incorporated into the zoning ordinance. As the drafting stage of the ordinance continues, more performance standards may be needed to prevent against negative impacts of certain uses.

II. CONCLUSION

Use regulations are an important part of any zoning code, regardless of the type. The weight placed on use regulations determines the character of the zoning ordinance. Traditional Euclidian regulations prioritize use regulations while form-based regulations de-emphasize that aspect of the regulating scheme in order to prioritize form and function. Form based regulations are the direction zoning regulations across the country are taking. As these form-centered regulations require great study as to the type of form to be incorporated into the regulation, they can only be used where plans recommend the design to be regulated. The zoning revision for the City of Rockville, therefore, will incorporate form regulations only where the existing master plan include design recommendations or guidelines, such as the Town Center and Rockville Pike. Elsewhere in the City, the zoning revision will maintain traditional use-centered regulations. Uses will be regulated in both types of zoning districts, however the emphasis placed on uses will differ greatly.

The considerations of use regulations are a wide spectrum. Besides regulating where uses are to be located, there is also the consideration of defining uses, characterizing how they are to be permitted (by right, by special exception, subject to special conditions provided in the ordinance language); and administering these uses. The recommended changes of the Rockville Zoning Ordinance will focus substantially on how uses are classified, defined, and where they are allowed. As a result, this is an area of the revision that will take a substantial amount of time. It is likely that the staff and citizen review committees will be reconvened in the summer months to begin reviewing the use chart. Additional considerations of the revision of the use regulations include special exception amendments, publicly owned land amendments, and unclassified / broadly classified use guidelines. Together, these changes will demand a substantial amount of attention in the revision process.

III. ATTACHMENTS:

1. Form-Based Zoning, PAS Quick Notes No. 1, American Planning Association.
2. Lewis, Roger K., “Traditional Zoning Can’t Meet the Challenge of Modern Development,” Washington Post, July 24, 2004.
3. Local Government Commission, Form-Based Codes: Implementing Smart Growth.
4. Zoning Ordinance, Rockville City Code
 - a. Use Permits, Article V, Permits, Section 25-191 thru 25-194

- b. Use Restrictions, Article VII, Zoning District Regulations, Sections 25-296 thru 25-300
 - c. Special Exceptions, Article VIII, Special Exceptions, Sections 25-336 thru 25-385.
- 5. General Land Use Distribution Map